



Territory of Guam  
Territorio de Guam

OFFICE OF THE GOVERNOR  
U'FSINAN I MAGA'LAHI  
AGANA, GUAM 96910 U.S.A.

RECEIVED  
OFFICE OF THE SPEAKER  
DATE: 6/14/93  
TIME: 12:30  
RECD BY: [Signature]

*[Signature]*  
MEMBER TO SECRETARY  
LEGISLATIVE SECRETARIAT

JUN 11 1993

The Honorable Joe T. San Agustin  
Speaker, Twenty-Second Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 302, which has been designated as Public Law  
22-17.

Sincerely yours,

*[Signature]*  
JOSEPH F. ADA  
Governor of Guam  
220253

Attachment

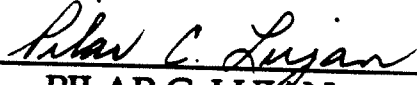
TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

CERTIFICATION TO THE GOVERNOR OF PASSAGE OF AN ACT

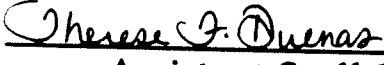
This is to certify that Substitute Bill No. 302 (LS), "AN ACT TO REPEAL ARTICLE 3 OF CHAPTER 22, TITLE 11, GUAM CODE ANNOTATED (§§22301 THROUGH 22309, INCLUSIVE), TO REPEAL THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE," returned to the Legislature without the approval of the Governor, was, in accordance with the Organic Act of Guam, reconsidered by the Legislature and after such reconsideration, the Legislature did, on the 1st day of June, 1993, agree to pass said bill notwithstanding the objection of the Governor by a vote of two-thirds or more of all the members thereof, to wit: by a vote of sixteen (16) members.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 10<sup>th</sup> day of June  
1993, at 3:11 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. 302 (LS)

As substituted by the Committee  
on Ways and Means

Introduced by:

C. T. C. Gutierrez

J. P. Aguon

T. S. Nelson

D. L. G. Shimizu

E. P. Arriola

A. R. Unpingco

M. Z. Bordallo

H. D. Dierking

AN ACT TO REPEAL ARTICLE 3 OF CHAPTER 22, TITLE  
11, GUAM CODE ANNOTATED (§§22301 THROUGH  
22309, INCLUSIVE), TO REPEAL THE ADMISSION TAX,  
FIRST ENACTED IN SECTION 19201 OF THE  
GOVERNMENT CODE.

1        **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2        **Section 1. Article 3 of Chapter 22, Title 11, Guam Code Annotated,**  
3        **(§§22301 through 22309, inclusive, Admission Tax) is repealed.**

*Overridden*

**TWENTY-SECOND GUAM LEGISLATURE**  
1993 (FIRST) Regular Session

Date: 6/1/93

**VOTING SHEET**

Bill No. 302

Resolution No. \_\_\_\_\_

Question: to override notwithstanding Governor's objection

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George		✓		
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.		✓		
NELSON, Ted S.	✓			
PANGELINAN, Vicente	✓			
PARKINSON, Don		✓		
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.		✓		
SANTOS, Francisco R.				✓
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL 16 4 \_\_\_\_\_ 1



Page Two

The tax, under my proposal, would also apply to a small handful of businesses providing amusement rides for tourists. The tax would not apply to 99% of all tourism related activities including hotels, restaurants, sightseeing tours, shopping tours, sports activities, jet skiing, fishing charters, you name it.

By and large, the company most affected by this tax would be Atlantis Guam.

Now, would this tax pose an insurmountable burden on Atlantis Guam? I don't think so. Right now, Atlantis charges local customers \$50 per ride. For the same ride it charges tourists \$94 per ride. That is a difference of \$44, or a margin of 88%!

The tax adds a small 5% to this, or about \$4.50, 5% compared to 88%. Four and a half bucks, compared to forty-four.

Somebody is getting the difference.

Further, Atlantis is already getting a monumental tax break from its Qualifying Certificate. Under its QC, Atlantis gets 75% of its income taxes rebated for twenty years. And I'll tell you something. Unlike some hotels, which took many years to become profitable enough to benefit from their QCs, Atlantis is already receiving large rebates. It is already very profitable.

Given these massive tax breaks it already receives, I don't comprehend an argument that this small 5% tax represents any real threat to the financial viability of the company.

Nor will relieving Atlantis of this tax do anything more than increase the company's profits. Atlantis' tax break will not spur greater economic activity in Guam. There are not thousands of tourists waiting in Tokyo for word of this tax break before they visit our island. No tourist bases his or her travel plans on the cost of a submarine ride in Guam.

There is no good reason for Atlantis to get this extra tax break, but I have been in politics far too long to believe that the only reason why things happen is for good reasons. If the Legislature is insistent upon giving this extra tax break to this company, if it insists upon removing from this company the same tax it has been content to collect from our own people for three decades, then it is incumbent upon the Legislature to replace the revenues they are giving away.

Page Three

I am submitting herewith two proposals to do this. The first is a bill that represents the compromise position I have illustrated throughout, a 5% tax affecting only a few businesses, not the entire industry.

If this is deemed unsatisfactory, I have proposed a second measure. I propose that we tax commissions and touts paid in the visitor industry an additional 1%. I propose that we place this tax on any payment made to a company for the express purpose of procuring tourists customers. In other words, when a store pays an agent, for example \$25 for bringing a customer to their establishment, then that commision, or tout, would be charged a tax of 25 cents.

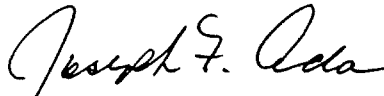
It is clear from this example that the burden would be very light indeed. However, the practice of extracting these so-called commisions in our tourism industry is so widespread, that the rigorous enforcement of this measure will easily generate sufficient revenue to replace that which the Legislature would be giving away by rejecting my compromise admissions tax.

This tax would not apply to sales commisions or employee bonuses, but only to commissions or fees paid for the purpose of procuring customers for a business.

Some may argue that this tax will discourage the payment of some commisions for customer-procurement. If this does indeed occur, is that altogether a terrible thing? This is one of the more pernicious practices in the industry, as indeed many in the Legislature have said from time to time.

In any event, it will preserve the integrity of the revenue stream in a manner I believe one would be hard pressed to demonstrate is harmful to anyone. Moreover, in order to demonstrate our good faith and to show the business community that we intend to use these funds for a good purpose, I propose that we earmark funds gathered from these measures for the Catastrophic Illness program. Let these revenues be used to provide comfort, aid and assistance to those afflicted.

Sincerely,

  
JOSEPH F. ADA  
Governor

220195

TWENTY SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. \_\_\_\_\_

Introduced by:

\_\_\_\_\_  
At the request of the  
Governor

AN ACT AMENDING 11 GCA §22301 REDUCING  
THE RATE OF THE ADMISSIONS TAX TO FIVE  
PERCENT (5%) AND EARMARKING REVENUES TO  
THE CATASTROPHIC ILLNESS PROGRAM.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1 Section 1. 11 GCA §22301 is amended to read:

2 "§22301. Imposition. Commencing on the effective date  
3 of this Chapter there is hereby imposed a tax [of one cent (\$0.01)  
4 for each ten cents (\$0.10) or the major fraction thereof] at the  
5 rate of five percent (5%) of the amount paid for admission to any  
6 place, including admission by season ticket or subscription. The  
7 tax imposed by this Section shall be paid by the person paying for  
8 such admission. [No tax shall be imposed under this Section on the  
9 amount paid for admission:

10 (a) If the amount paid for admission is twenty-five  
11 cents (\$0.25) or less or

12 (b) In the case of season ticket or subscription,  
13 if the amount which would be charged to the holder or subscriber  
14 for a single admission is twenty-five cents (\$0.25) or less.]"

15 Section 2. 11 GCA §22309 is repealed and reenacted to read:

16 "§22309. All revenue received from the imposition of the  
17 Admission Tax imposed in this Article is appropriated to the  
18 Department of Public Health and Social Services for the  
19 Catastrophic Illness program."



TWENTY SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

Bill No. \_\_\_\_\_

Introduced by:

\_\_\_\_\_  
At the request of the  
Governor

AN ACT ADDING 11 GCA §26202(h) TO  
INCREASE THE RATE OF THE BUSINESS  
PRIVILEGE TAX TO FIVE PERCENT (5%)  
FOR PERSONS RECEIVING COMMISSIONS FOR  
PROCURING TOURISTS FOR ANOTHER BUSINESS  
AND EARMARKING THE REVENUES FROM THE  
INCREASE TO THE CATASTROPHIC ILLNESS  
PROGRAM.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1           Section 1. Existing Subsections (h) and (i) of 11 GCA §26202  
2 are redesignated Subsections (i) and (j) respectively and a new  
3 Subsection (h) is added to 11 GCA §26202 to read:

4           "(h) Procuring tourists as customers. Upon every person  
5 engaging in the business of procuring tourists as customers for  
6 another person, there shall be a tax equivalent to five percent  
7 (5%) of the commission or payment received (tout)."

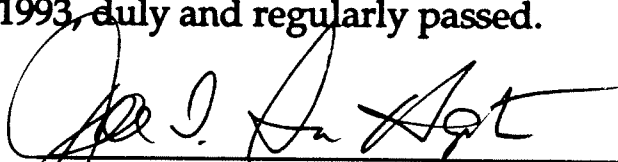
8           Section 2. 11 GCA §26206 is added to read:

9           "§26206. Twenty percent (20%) of the revenue received  
10 from the imposition of the Business Privilege Tax imposed in 11 GCA  
11 26202(h) is appropriated to the Department of Public Health and  
12 Social Services for the Catastrophic Illness program."


TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 302 (LS), "AN ACT TO REPEAL ARTICLE 3 OF CHAPTER 22, TITLE 11, GUAM CODE ANNOTATED (§§22301 THROUGH 22309, INCLUSIVE), TO REPEAL THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE," was on the 13th day of April, 1993, duly and regularly passed.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

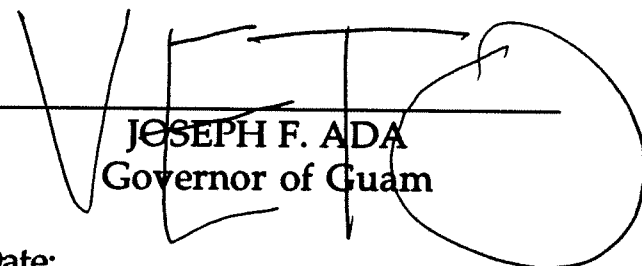
Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 15th day of April  
1993, at 8:55 o'clock 9 .M.

  
\_\_\_\_\_  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
JOSEPH F. ADA  
Governor of Guam

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

**TWENTY-SECOND GUAM LEGISLATURE  
1993 (FIRST) Regular Session**

**Bill No. 302 (LS)**

**As substituted by the Committee  
on Ways and Means**

**Introduced by:**

**C. T. C. Gutierrez**

**J. P. Aguon**

**T. S. Nelson**

**D. L. G. Shimizu**

**E. P. Arriola**

**A. R. Unpingco**

**M. Z. Bordallo**

**H. D. Dierking**

**AN ACT TO REPEAL ARTICLE 3 OF CHAPTER 22, TITLE  
11, GUAM CODE ANNOTATED (§§22301 THROUGH  
22309, INCLUSIVE), TO REPEAL THE ADMISSION TAX,  
FIRST ENACTED IN SECTION 19201 OF THE  
GOVERNMENT CODE.**

- 1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**  
2           **Section 1. Article 3 of Chapter 22, Title 11, Guam Code Annotated,**  
3 **(§§22301 through 22309, inclusive, Admission Tax) is repealed.**

61

## TWENTY-SECOND GUAM LEGISLATURE

1993 (FIRST) Regular Session

Date: 4/13/93

### VOTING SHEET

Bill No. 302

Resolution No. \_\_\_\_\_

Question: \_\_\_\_\_

NAME	AYE	NO	NOT VOTING/ ABSTAN	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.				✓
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A. -			✓	
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don		✓		
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T. -	✓			
SANTOS, Francisco R.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

18    1    1    1

155 Hesler Street  
Pacific Arcade  
Agana, Guam 96910  
Telephone: (671) 472-3407 thru 9  
Fax: 477-3161

# Twenty-Second Guam Legislature



**CARL T.C. GUTIERREZ**  
Senator

March 5, 1993

Chairman, Committee  
on Ways & Means

Vice-Chairman, Commut  
on Rules

Vice-Chairman, Commut  
on Tourism & Transporta

Honorable Speaker Joe T. San Agustin  
Speaker, Twenty-Second Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:


The Committee on Ways & Means wishes to report out its findings on **BILL NO. 302, "AN ACT TO REPEAL AND REENACT §§22301 AND 22302 OF TITLE 11, GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE"**, to the full Legislature with the recommendation to **do Pass as Substituted**.

The Committee Voting Record is as follows:

TO PASS:	<u>11</u>
NOT TO PASS:	<u>0</u>
ABSTENTIONS:	<u>0</u>
INACTIVE FILE:	<u>0</u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely,

  
**CARL T. C. GUTIERREZ**  
Chairman, Committee on  
Ways & Means

Attachments

AN ACT TO REPEAL AND REENACT §§22301 AND 22302 OF TITLE 11, GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE.

	TO PASS	NOT TO PASS	ABSTAIN	TO PLACE INACTIVE
<i>[Signature]</i> Senator Carl T. C. GUTIERREZ Chairman	✓			
<i>[Signature]</i> Senator Herminia D. DIENKING Vice-Chairman	✓			
<i>[Signature]</i> Senator Thomas C. ADA Member	✓			
<i>[Signature]</i> Senator John P. AGUON Member	✓			
<i>[Signature]</i> Senator Elizabeth P. ARRIOLA Member	✓			
<i>[Signature]</i> Senator J. George BAMBA Member	✓			
Senator Anthony C. BLAZ Member				
<i>[Signature]</i> Senator Pilar C. LUJAN Member	✓			
<i>[Signature]</i> Senator Marilyn D. A. MANABAN Member	✓			
<i>[Signature]</i> Senator Ted S. NELSON Member	✓			
<i>[Signature]</i> Senator Vicente C. PANGELINAN Member	✓			
<i>[Signature]</i> Senator Antonio R. UNPINGCO Member	✓			
Speaker Joe T. SAN AGUSTIN				

**COMMITTEE ON WAYS AND MEANS  
COMMITTEE REPORT ON**

**BILL NO. 302**

**AN ACT TO REPEAL AND REENACT §§22301 AND 22302 OF TITLE 11, GUAM CODE ANNOTATED, TO CLARIFY THE ORIGINAL INTENT OF THE IMPOSITION OF THE ADMISSION TAX, FIRST ENACTED IN SECTION 19201 OF THE GOVERNMENT CODE.**

**PURPOSE AND ESSENTIAL ELEMENTS**

Bill 302 as introduced contained provisions which inserted a definition of "place" into the Admission Tax law. The definitions were designed to continue the implementation of the Admission Tax as it has been over the past years, to apply to stationary places rather than moving places such as buses, ships, rides, and so forth, which are now prevalent in the visitor industry. The reason for this bill's introduction is that recently, the Department of Revenue and Taxation has interpreted the word "place" in the present statute as covering moving places, and has assessed some businesses with the Ten Percent (10%) Admission Tax retroactively. The effect of this interpretation on businesses on Guam is not fully known, however, some clarification is needed.

**PUBLIC HEARING**

The Committee on Ways and Means conducted a public hearing on Thursday, March 4, 1993 at 9:00 a.m. in the Legislative Public Hearing Room to gather testimony on Bill No. 302. Present at the hearing was Senator Carl T.C. Gutierrez, Chairman of the Committee, who conducted the hearing, being joined by Senators John P. Aguon, J. George Bamba, Anthony R. Unpingco, Pilar C. Lujan, Ted S. Nelson, Ben C. Pangelinan, Marilyn D.A. Manibusan, and Elizabeth P. Arriola, committee members, and Senator Doris F. Brooks.

**TESTIMONY**

Chairman Gutierrez opened the session by indicating that the intent of the bill is to be a vehicle to answer the problem which is arising now concerning the imposition of the Admission Tax. There has to be a way to determine what is covered by the tax and what is not. The reason for this

hearing is to solve this problem, not necessarily dwell on the wording of the bill as it is now drafted.

Those testifying on Bill No. 302 were:

1. **Director Joaquin Blaz and Deputy Director Antonio Aguon, Department of Revenue and Taxation.** Director Blaz submitted written testimony against the bill, which he read to the committee and which is attached.

The written testimony indicates that those who approach the Department of Revenue and Taxation with a plan to pay Admission Tax in the future need not fear retroactive assessments. It also indicates that the Department believes that the fact that an activity does not exist at the time of enactment of a statute does not mean that the statute should not apply to the activity when it does come into existence.

The Department takes the position that the tax is imposed on customers of a business, and not the business itself.

The Director's testimony took the position that the visitor industry must pay its fair share of taxes, that the Department of Revenue and Taxation will aggressively collect taxes, and that many members of the visitor industry already have qualifying certificates from the Guam Economic Development Authority which exempt them from much of the burden of taxation, yet Guam has turned out to be a good investment for these businesses. The Director indicates that present collection of the tax is about \$200,000 annually. He estimates that the tax will be about \$5.43 per visitor to Guam, and that the aggressive collection of it could yield approximately \$3-4 Million annually. These funds can be used for a sports complex, or a Fine Arts facility.

The Director offered alternative language, exempting tour buses. He also suggested that the rate of tax be reduced to \$.01 for every \$.20, or 5% instead of the current 10%.

2. **Mr. Milton Franke, General Counsel, Atlantis Guam, Inc.** then testified in favor of the bill. He submitted written testimony, which is attached. Orally, Mr. Franke took up the following points: he indicated that the present law is an almost verbatim copy of a 1917 federal statute.



This was originally an excise or luxury tax to raise revenues for the United States during World War I. This type of tax is directed at disposable income. Federal law applies many excise taxes to different luxury items. Guam enacted its Admission Tax in 1961, but in 1965 the federal government repealed its version of the law on the basis that it was very difficult to interpret.

Mr. Franke indicated that the question now is whether or not to impose a tax on a disposable income basis. The imposition of an excise tax on a part of the tourism industry will, in a sense, dispose of a portion of that tourism industry. He pointed out that on the tourism industry, first there is Thirteen Percent (13%) Hotel Occupancy Tax, Four Percent (4%) GRT paid by the hotel, Thirty-four Percent (34%) income tax of the company is making a good profit, another Four Percent (4%) on every other transaction that a tourist makes on the island.

Mr. Franke indicated that the federal government's imposition of an excise tax on the yacht industry has driven that industry into the depths of a depression and causing lay-offs of employees. The federal government is now considering repealing it. He pointed out that the Guam Admission Tax is not a one-time thing, but would be applied to every activity entered into by a tourist.

Mr. Franke indicated that all would agree that the language of the tax needs clarification, because even the Department of Revenue and Taxation has offered an amendment clarifying the language. He indicated that there have been conflicting reports in the newspaper quoting personnel of the Department as indicating both that the tax applies to the hotels and that it does not apply to hotels. He also indicated that activities on Guam can be overcharged, and thereby it could be interpreted that the overcharge is an admission to the activity, thereby being taxed.

Mr. Franke suggested that if the rate of collection would be \$3-4 Million per year, that this amount is not enough for a sports complex or a fine arts building.

The sewer fee that will now be assessed to businesses, while not a tax, is another expense like a tax that will be passed on to the tourist.

Mr. Franke suggested that the Legislature should consider whether the tourist industry is such an industry which should be further taxed at this particular time.

3. **Mr. Bruce Kloppenburg, Vice-President, on behalf of Mr. Hideo Kobayashi, President, Japan Guam Travel Association (JGTA),** then testified. Written testimony signed by Mr. Kobayashi, which is attached, was read by Mr. Kloppenburg.

The written testimony indicates that the prediction for the number of Japanese visitors to Guam by the members of JGTA dropped from 590,454 in 1992 to and expected 480,000 for 1993. It states that the arrivals in January and February of 1993 have dropped Twenty Percent (20%). It is estimated that the loss of one tourist will result in the loss of from \$500 to \$1,100 to the economy of Guam.

Two factors affecting the drop are the Japanese economy and the increased competition from other tourist destinations. The reason Guam appeals to Japanese is that there is proximity to Japan and it is an inexpensive destination.

The recommendation is that all solutions should be considered for this problem, and even the Thirteen Percent (13%) Hotel Occupancy Tax should be reduced to Ten Percent (10%).

4. **Mr. Peter Sgro,** stating that he is the Immediate Past Chairman, a member, and a member of the Executive Committee of the Guam Chamber of Commerce. He stated that he wanted:

"the record to reflect that he served as legal counsel to Atlantis Guam, Inc., that there has been full disclosure to the Guam Chamber of Commerce Board, its Executive Committee, and any and all ethical rules applicable to attorneys have been complied with. with also authorization to speak on behalf of his client, Atlantis Guam."

Mr. Sgro submitted the following oral testimony: He indicated that he wanted to make the points that there needs to be notice that an individual is subject to a tax. He indicates that a higher standard is required with respect to taxes. He pointed out that when an individual renews a business license, the individual goes through a tax background check.

Some business, including Atlantis, have always been issued their business licenses. Therefore, the Department of Revenue and Taxation must have taken the position previously that no taxes were owing.

Mr. Sgro disputed the explanation by the Department of Revenue and Taxation that the Admission Tax is a tax on customers, and not the business. He pointed out that that is why there is a tax collector, and that individuals such as employees of Atlantis have never been told that they are deputized to collect taxes.

Mr. Sgro also indicated that Atlantis did not really want to go to court on this matter, but that they have no choice under the circumstances.

Mr. Sgro indicated that looking to the Admission Tax as a source to finance bonds for a sports complex or a civic center will not be favorably looked upon by bond counsel who have to write an opinion about bonds when there is going to be major litigation on the subject of whether the tax as it stands now can be imposed. The bond counsel know from previous bond issues that Guam's economy is based solely on tourism.

**5. Ms. Antoinette D. Sanford, Chairwoman, Board of Directors, Guam Chamber of Commerce,** then testified on behalf of the Chamber of Commerce.

Ms. Sanford submitted written testimony, which is attached. She stated that the Chamber is in favor of discussing the points of strengthening the present law by allowing for retroactive application of the Admission Tax, and providing for definitions to "place" to limit it to fixed and not moving places.

The Chamber's position as stated in their February 10, 1992 letter attached to their testimony, is in favor of the outright repeal of the Admission Tax.

She stated that the bill addressed ambiguity in the tax, the Chamber's concerns still are around effectiveness, efficiency, and viability of the tax still remains. The Chamber recommends a study to establish the amount of revenues generated from the tax in light of costs and negative perceptions generated for Guam's image in the international tourism marketplace. She indicated that there may be more advantages to Guam

in the marketplace from the outright repeal. Barring repeal, the Chamber of Commerce is in favor of the intent of the bill as presented.

6. **Mr. Kenneth L. Carriveau, President, Guam Hotel and Restaurant Association**, then testified on behalf of the Association. He read written testimony signed by himself and **Mr. Manfred Pieper, Chairman of the Board** of the Association. The testimony is in favor of Bill 302. The testimony points out that tourist attractions on Guam already have a reputation for being high in cost, and to tack on a tax would aggravate the problem in the tourist industry today.

The Guam Hotel and Restaurant Association recommended an amendment to a section of the bill to clarify the definition of "any fixed or stationary building".

7. **Mr. Sonny Ada, Chairman of the Board of Directors of the Guam Visitors Bureau** then testified in support of the intent of the bill. He read his testimony, which is attached. The testimony sets out the various hardships that have been visited upon the tourist industry during the past two years. The main thrust of the testimony was the applicability of the Admission Tax to an industry already having difficulties, which may cause elements of the Guam visitor industry to fail. The GVB feels that the Admissions Tax as first implemented was meant for places such as movie theaters, nightclubs, cockfights, boxing matches, wrestling matches, and music concerts, not for the many various tourist attractions not of a fixed nature which have now started doing business on Guam.

The GVB indicates that a selling point for Guam is its stable government. Although it is not secret that the government is losing revenues and is seeking places to make up for the losses. Doing it in this manner will make Guam an expensive tourist destination, and much more will be lost from the tax than gained.

The GVB presents in their written testimony the estimated losses which would result from the applicability of the tax and a graph of visitor and tax losses, which is attached.

The GVB would like a fair and equitable settlement to be reached concerning the assessment of the Admission Tax, so that the situation will be mutually beneficial to all.

**Questioning and discussion among committee members and those testifying:**

Chairman Gutierrez then started the questioning of those testifying. Senator Gutierrez inquired whether the Administration is backing up the position of the testimony of the Director of the Department of Revenue and Taxation.

Director Blaz indicated that the Administration is backing his position.

Chairman Gutierrez inquired why the Director chose to interpret the tax in this manner at this time. Whether it is a matter of making a different interpretation of the law now, or just following the law.

Director Blaz indicated that he is just enforcing the law. That he is testifying on the bill because he feels it proposes that certain classes of people be exempted from the tax.

Discussion then took place on tax rebates for elements of the tourist industry.

Chairman Gutierrez then inquired what other taxes are taxes on customers and not the business itself. Director Blaz indicated that the Admission Tax is on the customers and not the business. Chairman Gutierrez then inquired why the Department of Revenue and Taxation is now assessing the business of Atlantis Guam retroactively, if the tax is on the customer and not the business. Director Blaz indicated that they are not assessing retroactively to businesses, that there is only one business that they are actively working with now on this. Director Blaz did not want to discuss specific business's tax matters, but indicated that he would apply the Admission Tax prospectively.

Chairman Gutierrez asked if Atlantis Guam was being assessed retroactively for taxes the company has not paid on admissions.

Director Blaz indicated they were talking with Atlantis, and their representatives are here at the hearing.

Director Blaz indicated that the Department would apply Admission Tax prospectively, period.

Director Blaz would not discuss any matter between the Department and Atlantis Guam.

Mr. Milton Franke, General Counsel for Atlantis Guam, then indicated that the company had been assessed retroactively. Chairman Gutierrez then inquired how it could be a tax on the customer and not the business, when the customers are not gone and unknown and the business is being assessed retroactively. Director Blaz indicated that that is true, but if the business did not collect the tax, that the business would be responsible.

Mr. Franke then indicated that it is generally known that Atlantis Guam was assessed retroactively. In the fall of 1992, the definitions were expanded for the collection of this tax. Somewhat over \$2 Million Dollars were assessed, however it is not clear whether this includes interest and penalties.

The Chairman inquired why the Department was not assessing tour bus rides. Director Blaz indicated that bus rides are simply transportation and the Chairman indicated that maybe it is a tourist attraction to see the beauty of the island from a bus ride. Director Blaz did not agree that that was so. Chairman Gutierrez indicated that any future Director of Revenue and Taxation could make up new definitions and apply the tax to whatever business would come under the definitions. Director Blaz indicated that he felt it would be desirable to clarify definitions in the bill.

Chairman Gutierrez indicated that there were some fees collected somewhere for tour bus rides, and he felt that this was an amusement. He asked various questions on the permutations of rides and where it was paid to try to clarify how Director Blaz would want to apply the tax.

Chairman Gutierrez pointed out that the imposition of the widened definition of the tax now would negatively impact the tourist industry, as presented by statistics provided by various parties testifying at the hearing.

Director Blaz indicated that this Admission Tax would not put the tourist industry out of business and that the businesses know that full well, and

that they do not want to pay taxes any more than any other taxpayer wants to pay taxes. He did not feel that the impact would be that great.

Chairman Gutierrez indicated that with the vagueness of the present law, would the Director be willing to name every business on the island that the Department feels should pay this tax, so everyone will be on notice. Director Blaz did not think this was necessary, that the Department is reasonable and businesses should seek out Revenue and Taxation to work out those cases where the taxpayer is unsure that the tax applies to them.

Chairman Gutierrez indicated that he felt that it was not clear. He indicated that in the paper there was a report that the onus of finding out whether a business should pay their taxes is on the business, yet licenses continue to be renewed at the Department when they have not been cleared that their taxes have been paid.

Director Blaz indicated that the Department was remiss in not collecting these taxes in the past and that now they are trying to rectify this.

Chairman Gutierrez asked if Director Blaz would like to relent on his position and Director Blaz indicated he would not. Chairman Gutierrez asked Director Blaz if he would take full responsibility if the tourism industry broke down, and Director Blaz indicated that he would.

Senator Aguon then questioned those offering testimony. Senator Aguon indicated that the language in the present law is vague, and that there has for a long time been a question in the minds of those in the business community about what the tax applies to. He inquired why now that so many people are confused about the application of the tax now. He felt that the matter should be clarified and that people should be notified if the tax is applicable to them.

Senator Aguon asked what is so questionable about the tax right now. Director Blaz does not believe that there is anything questionable, but that the Department failed miserably in collecting the tax. Senator Aguon asked why, if things were so clear, why the Department did not collect the taxes. Director Blaz said that the Department just didn't do its job. He feels he should not be criticized for doing his job now. Senator Aguon inquired how it could be that so much revenue should be coming to the government and that it has been ignored.

Senator Aguon pointed out that the tax had not been enforced. He wants clear language, so that anyone would know how to enforce it consistently. He also wanted to have some clarification on what direction the government should go in regard to this tax. Senator Aguon indicated that he would have liked to have testimony from Department of Commerce, Bureau of Budget and Management Research, and even the Governor himself.

Senator Aguon asked that the Ways and Means Committee take the lead in gathering the needed information to decide what direction the government should go.

Senator Pangelinan then questioned the panel. He asked about an exemption granted several years ago on live entertainment, whether it came about from legislation or interpretation. Director Blaz indicated that it was by legislation a couple of years ago. Chairman Gutierrez pointed out that it was his legislation. Chairman Gutierrez clarified that the exemption applies to one time attractions that come into Guam, that are not here all the time for the tourist industry.

Senator Pangelinan then went into the suggestion of the Director to have a Five Percent (5%) tax instead of a Ten Percent (10%) tax. Senator Pangelinan inquired whether a Two Percent (2%) tax would break the back of the industry. Bruce Kloppenburg indicated that any tax would be detrimental at the present time, although he could not say just what amount of tax would break the back of the industry. He also pointed out that tour operators are not personally being taxed and that GJTA will not be taxed, but that the tax would make it harder to attract visitors to Guam.

Senator Pangelinan inquired whether GJTA was concerned about the price of movies, and was assured that they were.

Senator Pangelinan asked what would be the most expensive entertainment today that may be affected by the tax. Mr. Kloppenburg answered golf. Mr. Franke clarified that the 1961 law specifically exempted golf from Admission Tax but levied a fee for so many holes. Also bowling, so many dollars per lane, pool halls so many dollars per pool



table. Mr. Kloppenburg indicated that the most expensive option tour was about \$100.

Some discussion then took place between Senator Pangelinan and Mr. Franke on "disposable income".

Mr. Franke indicated that probably a guess as to what percent of tax would be desirable is not to be decided by those testifying, however these things are policy matters.

Senator Pangelinan indicated that the people who live on Guam have to perceive a value from having the tourism industry here, rather than another type of industry.

Director Blaz indicated on the issue of policy that the Hotel Occupancy Tax has been changed by the Legislature. He also indicated that the tour operators do charge a lot of charges to tourists, but the matter of taxes is different.

Director Blaz indicated that his sponsorship of the idea of a Five Percent (5%) tax instead of Ten Percent (10%) is also the Governor's position also.

Senator Pilar Lujan had no questions for the panel.

Senator Nelson asked about a moratorium on the collection of this tax, to provide a breathing room for the industry. Director Blaz indicated he was not in favor of this.

Discussion then took place that the Atlantis Guam issue could be settled administratively. Senator Nelson inquired whether the parties are able to agree, and Mr. Franke indicated that they could if their positions could get together. Mr. Franke then quoted some news stories that reported conflicting reports on whether the tax applies to hotel rooms. Mr. Franke indicated that the Hotel Occupancy Tax does not exempt hotel rooms from Admission Tax, and that the Admissions Tax itself also does not exempt hotel rooms.

Mr. Franke pointed out that case law from the Supreme Court on the similar federal law would have applied the tax to hotel rooms, that no requirement of entertainment is necessary.